

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 52, “Dependent Adult Abuse in Facilities and Programs,” Iowa Administrative Code.

The amendments add personal degradation as a form of dependent adult abuse by caretakers in facilities and programs regulated by the Department. The amendments provide that a caretaker in a facility or program licensed or certified by the Department may be found to have committed dependent adult abuse if the individual knowingly and willfully takes, transmits, or displays a photographic image that degrades the personal dignity of a dependent adult.

The amendments implement 2017 Iowa Acts, House File 544, which was signed into law by Governor Terry Branstad on March 30, 2017.

The Department does not believe that the amendments will pose any financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the amendments at its May 10, 2017, meeting and subsequently approved them at the Board’s July 12, 2017, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 7, 2017, as **ARC 3110C**. Comments were received from LeadingAge Iowa and Iowa Legal Aid, both of which requested that the definition of “personal degradation” contained in Item 2 be amended to include those actions that do not constitute personal degradation as defined in the legislation. Several members of the State Board of Health also thought that clarification as to what does not constitute personal degradation should be included in the rule making. The Department agrees with these suggestions, and the definition of “personal degradation” has been revised to include the recommended language. This change will eliminate confusion regarding the taking or transmission of electronic images when used to document dependent adult abuse or when used in the course of medical diagnostics.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 135C.14 and 2017 Iowa Acts, House File 544.

These amendments will become effective September 6, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **481—52.1(235E)**, definition of “Dependent adult abuse,” as follows:

“*Dependent adult abuse*” means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, ~~or neglect,~~ or personal degradation. “Dependent adult abuse” does not include any of the following:

1. to 3. No change.

ITEM 2. Adopt the following **new** definition of “Personal degradation” in rule **481—52.1(235E)**:

“*Personal degradation*” means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. “Personal degradation” includes the taking, transmission, or display of an electronic image of a dependent adult by a caretaker, where the caretaker’s actions constitute a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. “Personal degradation” does not include the taking, transmission, or display of an electronic image of a dependent adult for the purpose of reporting dependent adult abuse to law enforcement, the department,

or other regulatory agency that oversees caretakers or enforces abuse or neglect provisions, or for the purpose of treatment or diagnosis or as part of an ongoing investigation. “Personal degradation” also does not include the taking, transmission, or display of an electronic image by a caretaker in accordance with the facility’s or program’s confidentiality policy and release of information or consent policies.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/17.